NASUCA

NATIONAL ASSOCIATION
OF STATE UTILITY
CONSUMER ADVOCATES

September 8, 2003

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW B204
Washington, DC 20554

Re: In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147; **Emergency Joint Petition for Stay by the CHOICE Coalition**

Dear Ms. Dortch:

The National Association of State Utility Consumer Advocates ("NASUCA")[1] has carefully reviewed the Emergency Joint Petition For Stay of the FCC's line-sharing ruling filed by the CHOICE Coalition ("Coalition").[2] NASUCA believes that the legal, regulatory and policy arguments contained in that petition are meritorious, and strongly supports the request for a stay of the line-sharing ruling.

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[1] NASUCA is an association of 43 consumer advocates in 42 jurisdictions, including 40 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

[2] Report and Order and Order on Remand, FCC 03-36 (rel. August 21, 2003) ("*Triennial Review Order*"), ¶¶ 255-269. "Line sharing" is defined as allowing a competing carrier to provide digital subscriber line ("DSL") service over the same line that the incumbent uses to provide voice service to an end user, with the competitor using the high frequency portion of the loop ("HFPL") and the incumbent using the low frequency portion of the loop. *Id.*, ¶ 255.

In recent years, consumers across the nation have enjoyed substantial benefits from competition in broadband services, thanks largely to the ability of firms like the members of the Coalition to provide low-cost, high-speed Internet connections through DSL service using access to the high frequency portion of local telephone lines. Customers across the nation have recently enjoyed substantial price reductions for DSL; DSL is now being deployed more rapidly than ever throughout the nation. It would be very unfortunate if the elimination of line-sharing were to cause an increase in the cost of providing DSL service, hence of the cost of wireline broadband Internet access services.

While refusing to allow competitors to access only the high-frequency portion of the loop for line-sharing, the Commission has determined to require "line-splitting."[3] This means that competitors' access to the loop to provide DSL service will be limited to those situations where the customer has already determined to receive voice service from a competitor rather than the incumbent. Thus customers who decide -- for whatever reason(s) -- to retain voice service from the incumbent will be denied competitive choices for the DSL service used to provide wireline broadband Internet access.

The Coalition cites as the irreparable harm that they will suffer if a stay is not granted "immediate, dramatic price increases for continued access to the high frequency portion of the loop" (Petition at 43); the lack of such price increases for the incumbents' DSL affiliates (*id*. at 44); the current competitive disadvantage arising from the Commission's decision to preclude competitors from adding new HFPL customers after one year (*id*. at 45-48); and the above-mentioned inadequacies of line-splitting. *Id*. at 48. NASUCA agrees that these harms all justify granting a stay.[4]

For the above reasons, NASUCA supports the Coalition's request for a stay of the FCC's Triennial Review Order as it relates to line-sharing.

Yours truly,

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President, National Association of State Utility
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[3] *Triennial Review Order*, ¶¶251-252. "Line-splitting" is defined as the situation where one competitor provides voice service over the low frequency portion of the loop and another competitor provides DSL service over the high frequency portion of the same loop. *Id*., ¶ 251.

[4] Although NASUCA agrees that the FCC-ordered immediate price increase for the HFPL to 25% of the total loop rate creates irreparable harm when no such charge is imposed upon ILEC affiliates (see Petition at 43; *Triennial Review Order*, ¶ 265), NASUCA does support the use of a non-zero price for the HFPL, which a state commission may, after hearing and due consideration, determine to be 25% (or more) of the loop rate.

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